

REMARKS

In the Final Office Action¹ mailed July 22, 2011, the Examiner:

- rejected claims 13, 16, 19 and 21-23 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention;
- rejected claims 13, 16, 19, 21-23, and 25 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter;
- rejected claims 1, 4, 7, 13, 16, 19, 25-29, 33-36 and 40-41 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Pub. No. 2003/0130883 to Schroeder et al. ("*Schroeder*") in view of the Examiner's Official Notice as supported by U.S. Patent Pub. No. (2003/0065601) to Gatto ("*Official Notice*") ; and
- rejected claims 9-11, 21-23, 30-32, and 37-39 under 35 U.S.C. § 103(a) as unpatentable over *Schroeder* in view of the Examiner's Official Notice, and further in view of U.S. Patent Publication 2002/0143604 to Cox et al. ("*Cox*").

By this amendment, Applicants have amended claims 1, 13, 26-27, 33-24, and 40, and canceled claim 25 without prejudice or disclaimer. Upon entry of this Amendment, claims 1, 4, 7, 9-11, 13, 16, 19, 21-23, and 26-41 remain pending and

¹ The Final Office Action may contain statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Final Office Action.

under examination, with claims 1, 13, 26, 33, and 40 being independent. Applicants note that the amendments presented herein do not present new material that would necessitate a new search. Therefore Applicants respectfully request reconsideration and the timely allowance of the claims.

I. REJECTION OF CLAIMS 13, 16, 19 AND 21-23 UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Applicants respectfully traverse the rejections of claims 13, 16, 19 and 21-23 as unpatentable under 35 U.S.C. § 112, second paragraph. Office Action at 6. The Examiner contends that the as-filed disclosure does not support claims to a physical system. Although Applicants disagree with the Examiner's interpretation of the disclosure, in the interest of advancing prosecution and bringing the case to allowance, Applicants have amended claim 13 and canceled claim 25 without prejudice or disclaimer of its subject matter.

Although the Examiner alleges generally that no support for any physical structures exist in the as-filed disclosure, Applicants respectfully disagree. In particular, the specification contains many references to "[a] *system* and method," terms of art that, in the context of "software modules," inherently describe physical devices necessary to store, run, and interact with the "software modules." See Specification at [0001], [0004], [0010]-[0012], [0020], and [0022]-[0024]. Moreover, the "input screen" of Figure 3, inherently discloses a display device on which the screen capture was created. Thus, the specification at least discloses a "display screen," as in amended claim 13, necessary to display the input screen as disclosed in the specification.

Further, although claim 25 was not rejected under 35 U.S.C. § 112, second paragraph, the Examiner requested clarification of how claim 25 differed from claim 13. Applicants do not concede any clarification is required; the differences may be ascertained on their face. In the interest of expediting prosecution, however, Applicants have cancelled claim 25 without prejudice or disclaimer.

Therefore, the rejection of claim 13 under Section 112 should be withdrawn for the reasons stated. Because claims 16, 19, and 21-23 depend from claim 13 and incorporate the features of 13 due to the dependency, the rejections of these claims should also be withdrawn.

II. REJECTION OF CLAIMS 13, 16, 19, 21-23, AND 25 UNDER 35 U.S.C. § 101

Applicants respectfully traverse the rejection of claims 13, 16, 19, 21-23, and 25 under 35 U.S.C. § 101, as allegedly being directed towards non-statutory subject matter. The Examiner alleges that the claims are directed toward functional descriptive material, because the recited computer readable medium "could be directed to waves, signals, and other such non-statutory transmission media." Accordingly, Applicants have amended independent claim 13 to explicitly recite "non-transitory computer-readable medium." According to the "Subject Matter Eligibility of Computer Readable Media" dated Jan. 26, 2010 by USPTO Director David J. Kappos, this recitation is acceptable to overcome this rejection. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 13, as well as 16, 19, and 21-23, which include the recitations of claim 13 due to their dependent nature.

Claim 25 has been canceled without prejudice or disclaimer of its subject matter. Thus, the rejection of claim 25 should also be withdrawn.

III. REJECTION OF CLAIMS 1, 4, 7, 13, 16, 19, 25-29, 33-36, AND 40-41

Applicants respectfully traverse the rejection of claims 1, 4, 7, 13, 16, 19, 25-29, 33-36, and 40-41 under 35 U.S.C. § 103(a) as unpatentable over *Schroeder* in view of the Examiner's Official Notice.

As to the Examiner's taking of Official Notice, Applicants maintain and preserve their objection to the propriety of the Examiner's taking of Official Notice, and refer the Examiner to Applicants' previous arguments with respect to the Official Notice. See Responses of April 15, 2011 at 22, January 22, 2010 at 12-14, and July 13, 2009 at 7-8.

As to the Section 103(a) rejection as a whole, although Applicants do not agree with the Examiner's characterization of the cited references, Applicants have amended the claims to advance prosecution.

Moreover, the rejection is legally deficient because the Examiner has not properly resolved the Graham factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In particular, the Examiner has neither properly determined the scope and content of the prior art, nor properly ascertained the differences between the claimed invention and the prior art, at least because the Examiner has not interpreted the prior art and considered both the invention and the prior art as a whole. See M.P.E.P. § 2141(II)(B).

The Examiner has mischaracterized the prior art in attributing paragraphs [0043] and [0102] of *Schroeder* as disclosing "retail-load adjustments" as found in claim 1.

Paragraph [0043] of *Schroeder* defines “promotion cross effects and drop off” as “the activity of reducing base volume on related products or on the same product after the promotion has ended to reflect consumer switching during promotion periods and household pantry loading when promotions offer significant short term incentives that cause such consumer behaviors”

In contrast, amended claim 1 recites that “retail-load adjustments comprise determinations of extra retail stock needed based on retail demand resulting from the at least one marketing plan” The “base volume” of *Schroeder* does not reasonably disclose or suggest “retail-load adjustments” as in claim 1. Moreover, although *Schroeder* defines “promotion cross affects and drop off,” *Schroeder* does not reference nor discuss the concept anywhere else in its disclosure. One of ordinary skill in the art would not consider the cited portions of *Schroeder* to disclose “retail-load adjustments.” Further, paragraph [0043] of *Schroeder* discusses “*reducing* base volume,” whereas amended claim 1 recites retail-load adjustments as “determinations of *extra retail stock*. . .” (emphasis added). Thus, paragraph [0043] of *Schroeder* does not disclose this feature of the claims.

Neither does paragraph [0102] of *Schroeder* disclose “retail-load adjustments” as recited in claim 1. Paragraph [0102] does not clearly discuss “*retail*” stock as recited in the claims, but only “warehouse replenishment orders” as they pertain to “distributor-generated purchase orders.” Thus, *Schroeder* does not disclose “*retail-load adjustments*,” as in claim 1 (emphasis added). Further still, Paragraph [0102] of *Schroeder* discloses an integration of two systems with the goal of lowering inventory replenishment costs by *reducing* carried inventory. Thus, whereas *Schroeder* discusses

reducing carried inventory, amended claim 1 recites retail-load adjustments as "determinations of *extra retail stock* needed based on retail demand resulting from the at least one marketing plan" (emphasis added). For this additional reason, paragraph [0102] of *Schroeder* does not teach or suggest the claimed features.

The Examiner's *Official Notice* does not cure the deficiencies of *Schroeder*. In particular, the *Official Notice* neither teaches nor reasonably suggests "retail-load adjustments" as in claim 1.

Recitations similar to those argued above have been added to the other independent claims and dependent claims, such that all of the pending claims, whether independent or due to their dependent nature, incorporate claim features consistent with one or more of the recitations as argued above with respect to claim 1. Specifically, independent claims 13, 26, 33, and 40 have been amended to include features by recitations similar to one or more of the Applicants' arguments presented above with respect to claim 1. Also, as discussed above, claim 25 has been canceled. Therefore, Applicants submit that at least in light of these amendments and arguments, the independent claims are allowable. Due to their dependency on an allowable independent claim, dependent claims 4, 7, 16, 19, 27-29, 34-36, and 41 are also allowable. Accordingly, Applicants respectfully request withdrawal of the rejection of these claims and their timely allowance.

IV. REJECTION OF CLAIMS 9-11, 21-23, 30-32, AND 37-39 UNDER 35 U.S.C. § 103(A)

Applicants respectfully traverse the rejection of claims 9-11, 21-23, 30-32, and 37-39 under 35 U.S.C. § 103(a) as unpatentable over *Schroeder*, in view of the

Examiner's Official Notice, and further in view of *Cox*. These claims are allowable for at least the same reasons set forth above. A reasonable combination of *Schroeder*, the Examiner's *Official Notice*, and *Cox* all fail to teach all of the claimed features. In particular, none of *Schroeder*, the *Official Notice*, and *Cox* teach or reasonably suggest forecasting "retail-load adjustments" that are "determinations of extra retail stock needed based on retail demand resulting from the at least one marketing plan," as in the amended claims. Because these amendments incorporate corresponding elements similar to those argued above with respect to claim 1 into the other independent claims, claims 9-11, 21-23, 30-32, and 37-39 are allowable due to their dependent nature. Accordingly, Applicants respectfully request withdrawal of the rejection of these claims and their timely allowance.

V. CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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